

Applicant : Ridwan Shabsigh
Serial No. : 10/658,991
Filed : September 9, 2003
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Restriction Requirement

In the Office Action, the Examiner restricted pending claims 9-11 to one of the following allegedly distinct inventions under 35 U.S.C. §121 as follows:

- I. Claims 9-10, drawn to a method of increasing/maintaining the blood supply to a penis, comprising the administration of a nucleic acid encoding VEGF to a suitable cell in the subject's penis, classified in class 514, subclass 44; and
- II. Claim 11, drawn to a method to increase or maintain a blood supply to a genital area of a female, comprising administration of VEGF, classified in class 424, subclass 198.1.

In response to this restriction requirement, applicant hereby elects, with traverse, Group I, claims 9-11 for prosecution at this time.

However, applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement.

Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without

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serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Group I would provide the relevant prior art for Group II. Since there is no burden on the Examiner to examine Groups I and II together in the same application, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicant maintains that restriction is not proper under 35 U.S.C. §121, and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone them at the number provided below.

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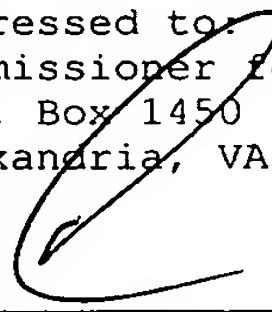
No fee is deemed necessary in connection with this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
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10/11/03
Date